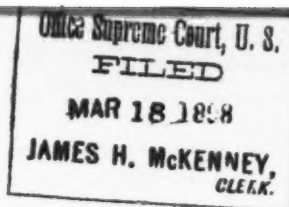


No. 119.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL., APPELLANTS,

vs.

THE UNITED STATES, GEORGE W. ATKINSON,
ET AL.

**Motion for Leave to File Finding of Court-Martial in
the Case of Henry O. Flipper.**

Now comes the appellant in the above-entitled cause, by Francis J. Heney, Esq., his attorney, and moves this honorable court for permission to file a certified copy of a judgment of court-martial finding Henry O. Flipper guilty of making false official reports as a second lieutenant and acting quartermaster in the United States Army, and of presenting a fraudulent check to his commanding officer as cash officially held by him when an official inspection of his cash on hand was being made.

The purpose of this offer is to impeach the credibility of said Henry O. Flipper as a witness, for the reason, among

others, that a certain report on the condition of the archives of Mexico was made by him since the trial of this case, and has been filed on the part of the Government as evidence in this case without the consent, either oral or written, of this appellant or his counsel, and this appellant has had no opportunity, through counsel or otherwise, to cross-examine said Henry O. Flipper upon any of the facts recited in said report, and especially upon one recital, contained therein at page 101 thereof, to the effect that no evidence of any kind appears in said archives of Mexico in relation to the grant which is the subject-matter of this suit, and for the reason that it is contended by this appellant that said recital in said report by said Henry O. Flipper is not true.

FRANCIS J. HENNEY,
Attorney for the Appellant.

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No. 119.

WILLIAM FAXON, JR., TRUSTEE, ET AL.,
APPELLANTS,

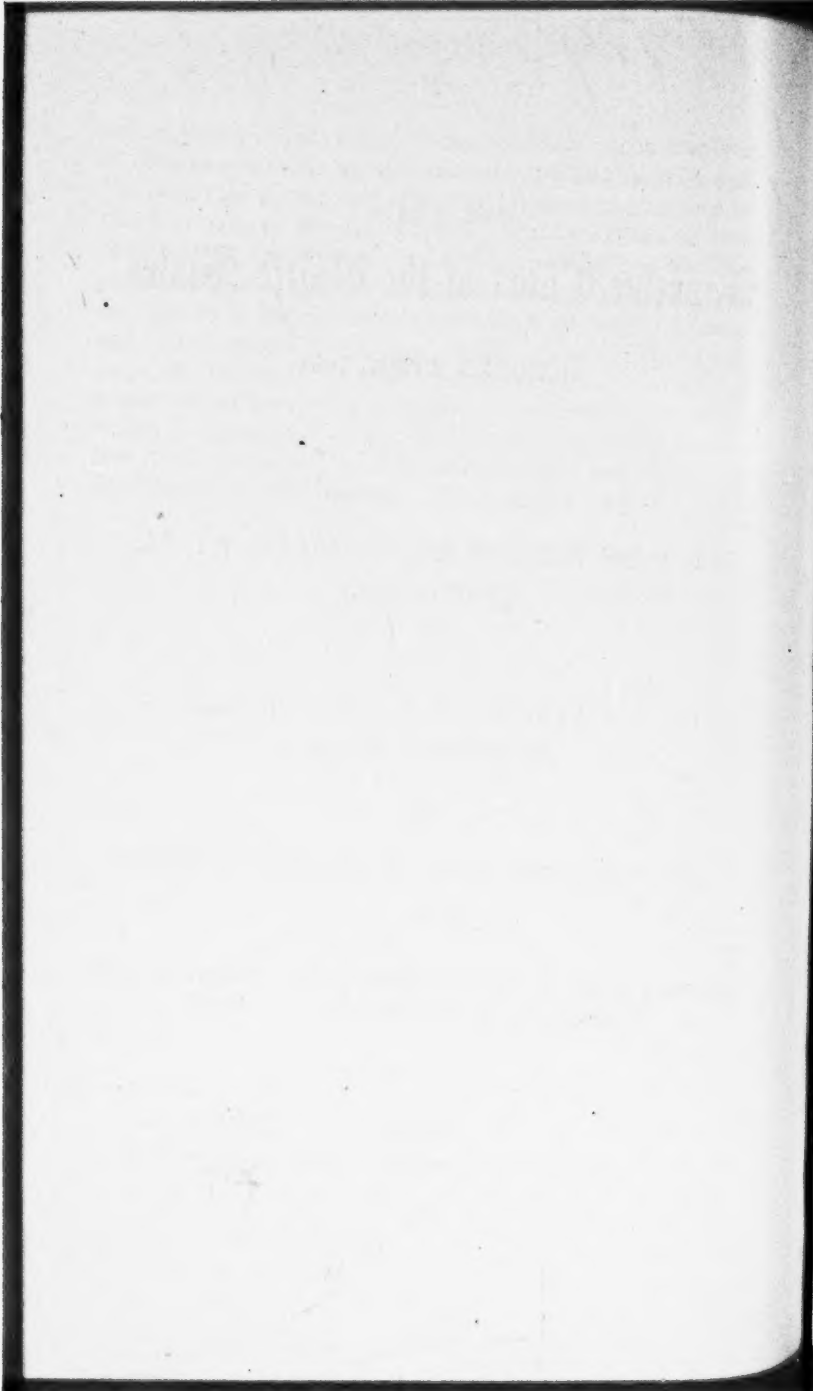
vs.

THE UNITED STATES AND GEORGE W.
ATKINSON ET AL.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

Certified Copy of Court-Martial Order Dismissing 2nd
Lieut. Henry O. Flipper from U. S. Army.

FRANCIS J. HENEY,
Attorney for Appellant William Faxon, Jr., Trustee.



GENERAL COURT-MARTIAL }
ORDERS, No. 39. }

HEADQUARTERS OF THE ARMY,
ADJUTANT GENERAL'S OFFICE,
Washington, June 17, 1882.

I. Before a general court-martial which convened at Fort Davis, Texas, November 4, 1881, pursuant to Special Orders, No. 108, dated September 3; No. 131, dated October 18; and No. 133, dated October 22, 1881, from Headquarters Department of Texas, San Antonio, Texas, and of which Colonel GALUSHA PENNYPACKER, 16th Infantry, is president, was arraigned and tried—

2d Lieutenant *Henry O. Flipper*, 10th Cavalry.

CHARGE I.—“Embezzlement, in violation of the 60th Article of War.”

Specification—“In this: that 2d Lieutenant *H. O. Flipper*, 10th Cavalry, did embezzle, knowingly and willfully misappropriate and misapply, public money of the United States, furnished and intended for the military service thereof, to wit: three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), more or less, which money came into his possession and was intrusted to him in the capacity of acting commissary of subsistence at the post of Fort Davis, Texas. This at Fort Davis, Texas, between the 8th day of July, 1881, and the 13th day of August, 1881.”

CHARGE II.—“Conduct unbecoming an officer and a gentleman.”

Specification 1st—“In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, having been directed, at or near Fort Davis, Texas, on or about the 8th day of July, 1881, by his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding the post of Fort Davis, Texas, to transmit certain funds, for which he, Lieutenant *Flipper*, was accountable as acting commissary of subsistence, to the chief commissary of subsistence of the Department of Texas, and on being asked at or near Fort Davis, Texas, on or about August 10th, 1881, by Colonel Shafter, if he had transmitted the said funds, part of which were in checks, did then, in substance and tenor, assure him, Colonel Shafter, that he had transmitted said funds; that he had endorsed the checks making them payable to the order of said chief commissary

of subsistence of the department, and sent the amount by mail; that he had taken the letter to the post-office himself, he, Lieutenant *Flipper*, well knowing the same to be false, in that the said funds had not been so transmitted and the checks had not been so endorsed."

Specification 2d—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 9th, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 9th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief C. S., San Antonio, Texas, since July 9th, 1881.....	3,791 77
In my personal possession, in office safe.....	150 17
Total amount.....	\$3,941 94

Very respectfully, your obedient servant,
(Signed) HENRY O. FLIPPER,
2d Lieut. 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false, and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 9th day of July, 1881."

Specification 3d—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 16th, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 16th, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to chief com's'y subs. Dep't Texas.....	3,791 77
In my personal possession, in office safe.....	289 34
 Total amount.....	 \$4,081 11

Very respectfully, your obedient servant,
(Signed) **HENRY O. FLIPPER,**
2d Lieut., 10th Regt. of Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 16th day of July, 1881."

Specification 4th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being on duty as acting commissary of subsistence at the post of Fort Davis, Texas, did submit for the approval of the post commander, Colonel William R. Shafter, 1st U. S. Infantry, his, Lieutenant *Flipper's*, 'weekly statement of public funds,' in words and figures to wit:

SUBSISTENCE DEPARTMENT U. S. ARMY,
FORT DAVIS, TEXAS, July 23d, 1881.

SIR: I have the honor to report my balance of subsistence funds on deposit and in hand at the close of the week ending Saturday, July 23d, 1881, as follows:

Deposited with the ass't treasurer of the U. S. at ———	\$
Deposited with the U. S. designated depository at ———
Deposited with the ——— National Bank at ———
Deposited ———
In transit to ch'f C. S. Dep't Texas, San Antonio, Texas . . .	3,791 77
In my personal possession, in office safe.....	479 30
 Total amount.....	 \$4,271 07

Very respectfully, your obedient servant,
(Signed) **HENRY O. FLIPPER,**
2d Lieut., 10th Regt. Cavalry, A. C. S.

To the CHIEF COMMISSARY OF SUBSISTENCE,
Headquarters Department of Texas, San Antonio, Texas.

which statement was false and known by him, Lieutenant *H. O. Flipper*, 10th Cavalry, to be false, in that the funds reported by him as in transit, and amounting to three thousand seven hundred and ninety-one dollars and seventy-seven cents (\$3,791.77), were not so in transit, but had been retained by him or applied to his own use or benefit. This at Fort Davis, Texas, on or about the 23d day of July, 1881."

Specification 5th—"In this: that 2d Lieutenant *H. O. Flipper*, 10th U. S. Cavalry, being acting commissary of subsistence at the post of Fort Davis, Texas, and in such capacity being required to make a weekly exhibit of the funds in his possession pertaining to the Government to his post commander, did exhibit to his commanding officer, Colonel William R. Shafter, 1st U. S. Infantry, commanding post of Fort Davis, Texas, as part of the aforesaid funds, a check in words and figures as follows:

Designated
Depository of the
United States.

No. 9.

SAN ANTONIO, TEXAS, May 20, 1881.

San Antonio National Bank

Pay to Lieut. *Henry O. Flipper*, A. C. S., or order, fourteen hundred and forty and $\frac{43}{100}$ dollars.

\$1,440.43.

HENRY O. FLIPPER,

2d Lieut., 10 Cav'y.

which check was fraudulent and intended to deceive the said commanding officer, as he, Lieutenant *Flipper*, neither had nor never had had personal funds in said bank, and had no authority to draw said check. This at Fort Davis, Texas, on or about the 2d day of July, 1881."

To which charges and specifications the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, pleaded "Not guilty."

FINDING.

The court, having maturely considered the evidence adduced, finds the accused, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, as follows:

CHARGE I.

Of the *Specification*,

Of the CHARGE,

"Not guilty."

"Not guilty."

CHARGE II.

Of the *1st Specification*, "Guilty."
 Of the *2d Specification*, "Guilty."
 Of the *3d Specification*, "Guilty."
 Of the *4th Specification*, "Guilty."
 Of the *5th Specification*, "Guilty."
 Of the CHARGE, "Guilty."

SENTENCE.

And the court does therefore sentence him, 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, "*To be dismissed from the service of the United States.*"

II. The proceedings, findings, and sentence of the general court-martial in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, having been approved by the proper reviewing authority and the record forwarded, in accordance with the provisions of the 106th Article of War, for the action of the President, the following are his orders:

EXECUTIVE MANSION, June 14, 1882.

The sentence in the foregoing case of 2d Lieutenant *Henry O. Flipper*, 10th Regiment of U. S. Cavalry, is hereby confirmed.

CHESTER A. ARTHUR.

III. By direction of the Secretary of War the sentence in the case of 2d Lieutenant *Henry O. Flipper*, 10th Cavalry, will take effect June 30, 1882, from which date he will cease to be an officer of the Army.

BY COMMAND OF GENERAL SHERMAN:

R. C. DRUM,
Adjutant General.

OFFICIAL:

Assistant Adjutant General.

UNITED STATES OF AMERICA.

WAR DEPARTMENT,
WASHINGTON CITY, *March 15, 1898.*

I hereby certify that the five pages hereto attached are a true copy of General Court-Martial Orders, No. 39, Headquarters of the Army, Adjutant General's Office, Washington, June 17, 1882, on file in the Adjutant General's Office, War Department.

H. C. CORBIN,
Adjutant General.

Be it known that H. C. Corbin, who signed the foregoing certificate, is the Adjutant General of the Army, and that to his attestation as such full faith and credit are and ought to be given.

In witness whereof I have hereunto
set my hand and caused the seal of the
Seal War Office, United States of War Department to be affixed on this
America. fifteen day of March, one thousand
eight hundred and ninety-eight.

G. D. MEIKLEJOHN,
Assistant Secretary of War.